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C O N F I D E N T I A L SECTION 01 OF 03 SKOPJE 000607

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SUBJECT: MACEDONIA: RETURNED ICTY CASES THREATEN BOTH RULING COALITION AND INTERETHNIC RELATIONS

REF: A. SKOPJE 590

¶B. SKOPJE 601

CLASSIFIED BY: Ambassador Reeker for reasons 1.5 (b) and (d).

¶11. (SBU) Summary: The four war crimes case files recently returned to Macedonian jurisdiction by the ICTY are threatening to fracture the new coalition between the largest ethnic Macedonian party, VMRO-DPMNE, and its ethnic Albanian partner, DUI. One of the four cases has already proceeded to trial; all of them implicate e-Albanian MPs. These cases have the potential to revive interethnic tensions and raw -- if latent -- hostility stemming from the brief civil conflict of 2001. The international community has invested significant resources into training judges and prosecutors on how to handle these cases properly. Despite this, there are questions about law enforcement and the judiciary's ability to process these cases fairly in a highly politicized environment. End summary.

Political Maneuvering as Gruevski Seeks a Way Out

¶12. (C) In the course of a Sept. 21 meeting on other subjects with PM Gruevski and FonMin Milososki, then-Charge inquired as to the GoM's thinking regarding the decision to prosecute the four cases recently returned to Macedonian jurisdiction by the ICTY. (Background: ICTY agreed to review the cases in 2002, but the tribunal declined to prosecute --or even investigate -- and returned the files to Macedonia earlier this year. All four cases implicate ethnic Albanians for acts committed during interethnic violence here in 2001.) Gruevski responded that he understood that this was a difficult issue for his coalition partner, the e-Albanian DUI party, and said he was meeting DUI leader Ali Ahmeti that same day to discuss the issue. He added that the Chief Prosecutor (CP) recently told him that the 2002 amnesty law does not apply to these cases (as Ahmeti has argued, see ref a), and that he will proceed with three out of the four (Gruevski said the CP told him that he does not have sufficient evidence to pursue the so-called "NLA Leadership" case).

¶13. (C) Gruevski added that the CP assessed that these cases could take as long as five years to prosecute. The "Mavrovo Road Workers" case (in which e-Albanians allegedly tortured a group of e-Macedonians) is the only one where court proceedings have already begun, but Gruevski said the CP told him that the fact that there are 19 defendants and the case is complex and seven years old will allow defense attorneys to drag out the process for years. Gruevski added that in another case, the Neprostino case, the CP said there is strong eyewitness testimony that the e-Albanian militant "Commander Leka" (now a DPA MP) murdered unarmed civilians. Gruevski added that courts in Belgrade and Sarajevo have prosecuted cases which the ICTY has decided not to pursue, so Macedonia has the same right.

What to Say to the Albanian Community?

¶14. (C) Charge responded that while we were not in a position to argue the matter vis--vis Macedonian law, this issue could have a serious deleterious effect on interethnic relations. Both sides committed violent acts in 2001, yet these cases are only being brought against one side from the conflict and will make it hard for the Macedonian people to put these events behind them. It is clear that the e-Albanian community understood that the spirit of the 2002 amnesty

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law was that it would be left up to the ICTY -- not the Macedonian justice system -- to adjudicate any war crimes arising from the conflict. Gruevski would have to make a convincing argument to the e-Albanian and international communities as to why these cases must proceed.

¶15. (C) Gruevski replied that he understood the point, but he is in a delicate position politically. He would have no problem if the CP or the courts ruled that the amnesty law indeed applies and the cases are dropped, but he believes he cannot take a stand on the issue other than to let the cases proceed. He is concerned that the main e-Albanian parties, DPA and DUI, may soon introduce a measure asking parliament to take a stand on the issue. While he understood that his coalition deal with DUI could be on the line, he told us that he cannot go along with criticizing the prosecutions and then face the e-Macedonian community, especially because the ICTY recently convicted e-Macedonian former MoI official Johan Tarculovski of war crimes.

A Temporary Accommodation...

¶16. (SBU) Following intensive VMRO-DUI negotiations over the course of last week, DUI MPs Hisen Xhemiali (Mavrovo case) and Hajrulla Misini (Lipkovo Dam case) voluntarily gave up their parliamentary immunity in order to submit to court proceedings in these cases (Mavrovo is the only case currently at trial; the Neprostino and the Lipkovo Dam cases are still with an investigative judge). Macedonian law required that the Parliament formally strip their immunity, which it did in an emergency late-night session on Sept. 27. Gruevski's Chief of Staff, Martin Protopger, told us Sept. 26 that the CP has agreed not to apply for preventive detention for Xhemiali in exchange for his agreement to be present at trial. Protopger added that the CP told

him that it appears that there is solid evidence against only four of the 19 defendants in the Mavrovo case, and Xhemali is not one of them. (Which begs the question why the other 15 are being tried at all.)

¶7. (SBU) While both sides have tried to approach this problem with relative goodwill and have kept harsh or provocative rhetoric to a minimum, these cases are potentially explosive, and not only for DUI. The three largest e-Albanian parties all have MPs implicated in these cases. Worse, trying these cases in the Macedonian courts could be viewed in the e-Albanian community purely as revenge for 2001 and for the trial of the two e-Macedonian officials in The Hague, Tarculovski and former Interior Minister Boskovski, who was recently acquitted.

¶8. (SBU) The international community, primarily the OSCE, has provided extensive training to law enforcement, prosecutors, and judges on how to properly investigate and try these cases, including witness protection, investigative techniques, knowledge of international legal principles and standards, etc. Additionally, OSCE has official observer status and has had the opportunity to review the files. Their experts here characterize the evidence they have seen as relatively scanty and the prosecutors and judges as apparently unprepared, despite being trained. OSCE and other observers here believe that Macedonian law enforcement and judicial officials are subject to political pressure and may be reluctant to make any ruling or judgment that the GoM might oppose.

¶9. (C) Ambassador discussed this issue with PM Gruevski during their SKOPJE 00000607 003 OF 003

initial meeting on Sept 29 (ref b). Ambassador urged that the GoM exert responsible leadership to ensure and fair and transparent outcome.

...But the Problem Remains

¶10. (SBU) Based on the interim accommodation DUI and VMRO have reached, it appears that these cases will proceed, and tensions may continue to rise. We will continue to urge the GoM - including VMRO and DUI -- to work to calm potential interethnic tensions arising from these cases, while maintaining a firm line that they must be handled fairly and transparently.

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